COMP/176/2005 1/30 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 176 of 2005
with
Company Application No.21 of 2006
and
Company Application No.229 of 2006
and
Company Application No.75 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ADITYA BIRLA NUVO LTD.

Versus

VISHWESHWAR MADHAV RAO RASTE & others

Appearance :

COMPANY PETITION No. 176 of 2005

Mr. Mihir Joshi, Senior Advocate, and Mr. Mihir Thakore, Senior Advocate, assisted by Mr. Sandeep Singhi for M/s. Singhi & Co for the petitioner

Mr. Gautam Joshi for respondent Nos.1 and 3

Mr. B.B. Naik for respondent No.2

Mr. Purvish J Malkan, Central Government Counsel, for Regional Director, Department of Company Affairs.

Company Application No.21 of 2006

and

Company Application No.229 of 2006

Mr. Gautam M. Joshi for the applicant-intervenor

Mr. Mihir Joshi, Senior Advocate, and Mr. Mihir Thakore, Senior Advocate, assisted by Mr. Sandeep Singhi for M/s. Singhi & Co for M/s. Aditya Birla Nuvo Limited.

Company Application No.75 of 2006

Mr. B.B. Naik for the applicant

Mr. Mihir Joshi, Senior Advocate, and Mr. Mihir Thakore, Senior Advocate, assisted by Mr. Sandeep Singhi for M/s. Singhi & Co for M/s. Aditya Birla Nuvo Limited.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 17/06/2006

COMMON **ORAL JUDGMENT**

1.This Company Petition under Sections 391 to

394 of the Companies Act, 1956, is filed with a prayer, inter alia, to sanction the Scheme of Amalgamation between Birla Global Finance Limited (hereafter referred to as 'transferor-company/amalgamating company, as the context may require) and Aditya Birla Nuvo Limited, formerly known as “Indian Rayon And Industries Limited” (hereafter referred to as 'petitioner-company/transferee-company/amalgamated company, as the context may require) and their respective shareholders and creditors (hereafter referred to as 'the scheme'). The scheme of amalgamation is produced at Annexure “I” of the compilation. It contains Part I general, Part II share capital, Part III transfer and vesting, Part IV issuance of shares and Part V general terms and conditions. The scheme of amalgamation at Annexure “I” is presented before this Court for according sanction as envisaged under Section 391 of the Companies Act, 1956.

2. Heard Mr. Mihir Joshi, Senior Advocate, assisted by Mr. Sandeep Singhi, learned advocate, for the petitioner-company, Mr. Gautam Joshi, learned advocate for applicants in Company Application Nos. 21 of 2006 and 229 of 2006 and Mr. B.B.Naik, learned

advocate for the applicant in Company Application No.75 of 2006.

3. At the outset, it is necessary to refer to the factual matrix of the case.

4. In Company Application No.332 of 2005, preferred by the petitioner-company, by the order dated 7th October 2005, the Court had directed the petitioner-company to hold and convene a meeting of equity shareholders to consider and, if thought proper, to approve with or without modification, if any, the said scheme of amalgamation. As per the direction of the Court, the meeting was convened at the Registered Office of the petitioner-company on November 16, 2005 at 11 a.m. So far as the meeting of the secured and unsecured creditors of the petitioner-company is concerned, on filing an undertaking by the petitioner-company that if any objection is raised by any creditor, the same may be considered by the Court and no objection shall be raised in this regard by the petitioner-company, the meeting of the secured and unsecured creditors of the petitioner-company came to be dispensed with. The said undertaking was filed on 13th October 2005 by Ms. Pinky Mehta, Senior Vice President of the petitioner-company.

Thereafter, notice of meeting was communicated individually to the equity shareholders of the petitioner-company. Even as per the requirement under the law, the notice of meeting was advertised in two daily newspapers, namely, Times of India (Ahmedabad edition) and Gujarat Samachar (Ahmedabad edition) on 22nd October 2005 and 23th October 2005 respectively. After convening the meeting of the shareholders, the scheme of amalgamation came to be approved with requisite majority and 98.13% of voters exercised in favour of the scheme and value of share was 99.93%, in the meeting dated 16th November 2005. Accordingly, the Chairman has filed his report, which is also annexed with the petition at Annexure “H”, dated 17th November 2005.

5. This Company Petition came to be filed on 22nd November 2005 and admitted. While admitting the matter, the Court had issued notice for hearing, which was served on the Central Government through Regional Director, Department of Company Affairs, on 25th November 2005 and notices came to be published in two daily newspapers. Even the affidavit of Shri Devendra Bhandari, Senior Vice President and Company Secretary of the

transferee-company dated 19th December 2005 has been filed confirming publication of notices in two daily newspapers and also service of notice to the Regional Director. It appears from the record that a letter was addressed by the Registrar of Companies, Gujarat, to the Central Government Counsel dated 21st December 2005 enclosing a copy of the Regional Director's letter dated 20th December 2005, by which, 'no objection' was given to the scheme of amalgamation by the Regional Director, Western Region, Ministry of Company Affairs, Government of India.

6. When the Company Petition came up for hearing on earlier occasion, it was adjourned from time to time so as to give sufficient time to the objectors-interveners, who have filed Company Application Nos. 21 of 2006 and 226 of 2006 and 75 of 2006.

7. Mr. Mihir Joshi, learned Senior Advocate for the petitioner-company, has referred to the events preceded after the Company Petition came to be admitted. He has drawn the attention of the Court to compliance of various statutory provisions under Sections 391, 393, 394A of the Act and the provisions of Rules 67, 69, 73, 74, 76, 77, 78 and 79 and other relevant rules. He has submitted

that the final hearing of the scheme was fixed on 22nd December 2005 and the applicant of Company Application Nos. 21 of 2006 and 75 of 2006 had not filed any objections, as required. He has, further, submitted that, now, there is a report of the Chairman about convening of the meeting and compliance of requisite requirements under the law and also report of the Regional Director dated 21st December 2005, by which, it is stated that, in sanctioning the scheme, the concerned authority has no objection. Mr. Mihir Joshi, learned Senior Advocate, has referred to the order dated 27th March 2006 passed by the Lucknow Bench of the High Court of Judicature at Allahabad in Company Petition No.21 of 2005, by which the scheme of amalgamation between Indo Gulf Fertilizers Limited and Aditya Birla Nuvo Limited came to be sanctioned. According to him, in the above proceeding also, Mr.Raste, shareholder and the applicant of Company Application No.21 of 2006 herein, had raised similar objections, which came to be rejected. Mr. Mihir Joshi, learned Senior Advocate, has also referred to the order dated 27th January 2006 passed by the learned Single Judge of the High Court of Judicature at Bombay in Company Petition

No.830 of 2005, by which, the scheme of amalgamation of Birla Global Finance Limited with Aditya Birla Nuvo Limited came to be sanctioned and the order dated 10th January 2006 passed by this Court in Company Petition No.175 of 2005, whereby, the scheme of amalgamation between Indo Gulf Fertilizers Limited and Aditya Birla Nuvo Limited came to be sanctioned.

8. Mr. Mihir Joshi, learned Senior Advocate for the petitioner-company, has further submitted that the objections raised by the applicant in Company Application No.21 of 2006 are thoroughly misconceived and barred by delay and laches. He has submitted that the objections are baseless, frivolous and devoid of any merit. According to him, Mr. Raste is having only two shares of the petitioner-company. He has emphasized that Mr. Raste has not even taken care to attend the meeting, which indicates callous and negligent attitude on the part of the objector-applicant, particularly when the applicant has high academic qualification as reflected from his 'resume'. According to Mr. Mihir Joshi, the scheme of amalgamation came to be approved with requisite majority and 98.13% of voters exercised in favour of the scheme

and value of share was determined at 99.93%, in the meeting dated 16th November 2005 and, therefore, the scheme deserves to be sanctioned in the interest of all concerned.

9. In support of the submissions, Mr. Mihir Joshi, learned Senior Advocate for the petitioner-company, has relied upon the judgments (1) in the case of Miheer H. Mafatlal v. Mafatlal Industries Limited, 87 Company Cases 792; (2) in the case of Alstom Power Boilers Limited vs. State Bank of India and another, 2002 (112) Company Cases 674; (3) in the case of Hindustan Lever Employees' Union vs. Hindustan Lever Limited and others, 1995 (83) Company Cases 33 (=1995 Supp (1) SCC 499); and (4) in the case of Larsen and Toubro Limited, (2004) 3 Comp LJ 304 (Bom). He has submitted that when the scheme has been sanctioned by vast majority of the shareholders, the Court would not like to weigh collective and commercial wisdom of the shareholders, particularly when the scheme is bona fide, fair, reasonable and in the interest of the shareholders and the public at large.

10. Mr. Gautam Joshi, learned advocate appearing for Mr. Raste, applicant in Company Application Nos. 21 of 2006 and 229 of 2006,

has submitted that the scheme at Annexure “I” is framed for the benefit of certain individuals and not in consonance with the statutory requirements. According to him, the scheme has violated the guidelines of the SEBI. Not only that, but the transferor-company and the transferee-company are having diverse business activities and even the share exchange ratio determined is not proper. He has, further, contended that since the transferee-company has sold equity shares in certain companies, due to which, the value of shares of the petitioner-company has gone down substantially, which has resulted into affecting share exchange ratio. According to Mr. Gautam Joshi, learned counsel for the applicant in Company Application Nos. 21 of 2006 and 229 of 2006, even valuation report was not provided to the objector and inspection granted was not adequate. Even, he has raised objection to the appointment of Mr. Bansi Mehta and M/s. Deloittee Haskins and Sells as valuers for submitting the valuation reports, since Mr. Bansi Mehta was having association with the Birla Group and, therefore, it cannot be said that the valuation report is free from bias or fair. Mr. Gautam Joshi has emphasized particularly

on the aspect of lock-in period of shares, which are proposed to be transferred under the scheme, as being violative of the guidelines of the SEBI. He has, further submitted that, due to certain difficulties, the meeting was not attended by Mr. Raste, but that aspect does not prevent him from raising objections before this Court. He has submitted that, so far as the scheme is concerned, there will be control over Asset Management Company by the petitioner-company without complying with the SEBI guidelines. Lastly, he has submitted that this Court is free to apply its mind and not to act merely as a rubber stamp and, since the principles laid down in Miheer H. Mafatlal (supra) are only illustrative and not exhaustive, the Court would be pleased not to accord sanction to the scheme submitted before it by the petitioner-company.

11. Mr. B.B. Naik, learned counsel for the applicant, R.K. Tourism Services Private Limited, of Company Application No.75 of 2006, has submitted that it is necessary to incorporate appropriate provisions for the liability of the transferee-company, which may arise in future with regard to any criminal and/or civil proceedings, that may

be instituted against the transferor-company. According Mr. Naik, in view of the criminal complaints filed against the transferor company where the investigation is going on, the present scheme of amalgamation is framed with a view to stifle the criminal prosecution. According to Mr. Naik, relevant information was not placed about the pending disputes between R.K. Tourism Services Private Limited and the transferor company. He has, therefore, submitted that this would amount to contravention of provisions of Section 391(2) of the Act and particularly the last words in proviso to sub-section (2) of Section 391 that, *'pendency of any investigation proceedings in relation to the Company under Sections 235 to 251 and the like'*. According to Mr. Naik, the above words 'and the like' indicate disclosure of criminal proceedings against the transferor-company. He has submitted that, since the transferor-company has forged certain documents regarding share purchase for which criminal complaints are filed, the present scheme, which is proposed, will render such proceedings otiose. He has drawn the attention of the Court to the filing of a review application before the High Court of Judicature at Bombay in respect of the order

of sanctioning the scheme in a petition filed by the transferor-company where the High Court of Judicature at Bombay has issued notice and the same is pending. In support of his submission, Mr. Naik, learned advocate for the applicant in Company Application No.75 of 2006, has relied upon the judgments reported in 18 Company Cases 144 [Calcutta Industrial Bank Limited] and AIR 1967 Bombay 456 [J.S. Davar vs. Shankar Vishnu].

12.In reply to the objections raised by the applicant of Company Application Nos. 21 of 2006 and 229 of 2006, Mr. Mihir Joshi, learned Senior Advocate for the petitioner-company, has submitted that, so far as the share exchange ratio is concerned, the same is determined by the experts in the field and the same is not required to be interfered with, when the vast majority of the shareholders have approved. He has relied upon the judgment of the Supreme Court in Hindustan Lever Employees' Union (supra) and submitted that the very reputed valuers, namely, Mr. Bansi Mehta and M/s. Deloittee Haskins and Sells, with international recognition, have submitted their report. Not only that, but, the similar objection was rejected by the Supreme Court in the above

case. Mr. Mihir Joshi, learned Senior Advocate, has also relied upon the judgment of this Court in Reliance Petroleum, 119 Company Cases 566, and submitted that, when share exchange ratio is supported by the opinion of experts and accorded sanction by a large number of shareholders, it is to be accepted, prima facie, as fair and reasonable. He has submitted that in absence of any material before this Court, the allegations of the applicant are baseless. To sum up, he has asserted that the factors considered for arriving at the share exchange ratio and the method adopted for its determination are in consonance with the law laid down by the Apex Court and this Court and, therefore, no interference of this Court is called for.

13.Before dealing with the rival contentions of the parties, it would be useful to refer to the observations found in the oft-quoted passage in Buckley on the Companies Act, 14th edition. They are as under:[Re:page 815,in Miheer H. Mafatlal (supra)]

“In exercising its power of sanction the court will see, first that the provisions of the statute have been complied with, second, that the class was fairly represented by

those who attended the meeting and that the statutory majority are acting bonafide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent, and thirdly, that the arrangement is such as an intelligent and honestman, a member of the class concerned and acting in respect of his interest, might reasonably approve.

The Court does not sit merely to see that the majority are acting bona fide and thereupon to register the decision of the meeting, but at the same time, the court will be slow to differ from the meeting, unless either the class has not been properly consulted, or the meeting has not considered the matter with a view to the interest of the class which it is empowered to bind, or some blot is found in the scheme."

13.1 The Supreme Court, in Miheer H. Mafatlal (supra), has dealt with the scope and ambit of the jurisdiction of the company court and broad contours of such jurisdiction, as laid down by the Apex Court, are as under:

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as

contemplated by section 391(1)(a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by section 391(2).
3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.
4. That all necessary material indicated by section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by section 391(1).
5. That all the requisite material contemplated by the proviso to sub-section (2) of section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the court gets satisfied about the same.
6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real

purpose underlying the scheme with a view to be satisfied on this aspect, the court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously x-ray the same.

7. That the company court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bonafide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the court are found to have been met, the court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the court there could be a better scheme for the

company and its members or creditors for whom the scheme is framed. The court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction."

14. It is required to be noted that valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. As observed by the Supreme Court, in Miheer H. Mafatlal (supra), the following four factors, which had to be kept in mind in the valuation of shares:

1. Capital cover,
2. Yield,
3. Earning capacity and
4. Marketability.

For arriving at the fair value of share, three well known methods are applied:

1. The manageable profit basis method (the earning per share method)
2. The net worth method or break up value method, and
3. The market value method.

15. The Supreme Court, in Hindustan Lever Employees' Union, in paragraph 41, observed as under:

“41. This problem of valuation in the case of amalgamation of two companies has been dealt with by Weinberg and Blank in the book Take-overs and Mergers in which it has been stated that some or all of the following factors will have to be taken into account in determining the final share exchange ratio:

1. The Stock Exchange Prices of the shares of the two companies before the commencement of negotiations or the announcement of the bid.
2. The dividends presently paid on the shares of the two companies. It is often difficult to induce a shareholder, particularly an institution, to agree to a merger or a share-for-share bid of it involves a reduction in his dividend income.
3. The relative growth prospects of the two companies.
4. The cover (ratio of after-tax earning to dividends paid during the year) for the present dividends of the two companies. The fact that the dividend of one company is better covered than that of the other is a factor which will have to be compensated for at least to some extent.
5. In the case of equity shares, the relative gearing of the shares of the two companies. The 'gearing' of an ordinary share is the

ratio of borrowings to the equity capital.

6. The values of the net assets of the two companies. Where the transaction is a thorough-going merger, this may be more of a talking-point than a matter of substance, since what is relevant is the relative values of the two undertakings as going concern.
7. The voting strength in the merged enterprise of the shareholders of the two companies.
8. The past history of the prices of the shares of the two companies.

16. In Sidhpur Mills Co Ltd, In re, AIR 1962 Guj 305, the Court has observed as under:

“... it is not for the court to scrutinise the scheme in the manner of 'a carping critic, a hair-splitting expert, a meticulous accountant or a fastidious counsel' for the effort is not to emphasise the loopholes, technical mistakes and the accounting errors. The perspective has to be that of the ordinary shareholder exercising his discretion in a reasonable and businesslike manner. Fundamentally, the point to be emphasized is that the discretion as to whether to sanction the scheme for amalgamation is one which the court has the jurisdiction to exercise. This cannot be concluded on the supposed consideration that the scheme has the support of a large majority of shareholders. Majorities are not

necessarily comprised individuals each of whom critiques the provision of the scheme with a measure of expertise. Lethargy is not unknown to collective bodies of shareholders and creditors. In these circumstances, the court has to be alive to the duty which sections 391, 392 and 394 cast upon it, before, the court grants the seal of its approval upon the proposed amalgamation."

17 Keeping in mind the aforesaid settled legal position, I have perused the record of the case and it appears that the petitioner-company has followed the statutory requirements under Section 391 of the Companies Act and the relevant Rules. So far as the issuance of notice to the shareholders and creditors and the procedure followed in the meeting is concerned, the report of the Chairman is on the record and resolutions have been passed approving the scheme of amalgamation with requisite majority and 98.13% of voters exercised in favour of the scheme and value of share was determined at 99.93%. The report of the Regional Director dated 20th December 2005 is produced on record, by which, 'no objection' was given to the scheme of amalgamation.

18.So far as the applicants/objectors are concerned, they have not remained present in

the meetings and no objections have been raised. In view of the above, I have considered certain objections of the 'late latifs' of Civil Application Nos.21 of 2006 and 229 of 2006. At page 50 of the explanatory statement under Section 393 of the Act, it is reflected that, for determining the fair value, (1) Net Assets Method; (3) Earning Capitalisation Method and (3) Market Price Method came to be followed. Thus, recommendation of share exchange ratio by the experts and qualified firm, of one equity share of amalgamated company of Rs.10 each fully paid up for every three equity shares of amalgamating company of Rs.10/- each fully paid up for the issue of shares to the shareholders of the amalgamating company upon the effectiveness of the scheme, is reasonable and in consonance with the law laid down by the Apex Court in Hindustan Lever case (supra).

19.I have also perused the salient features of the scheme, reflected at page 51 onwards. Thus, I am of the view that the share exchange ratio which has been arrived at on the basis of well accepted norms by the experts in the field and approved by overwhelming majority of the shareholders,

requires no interference.

20. So far as the objection of the applicant with regard to gaining control over Asset Management Company without following the guidelines of the SEBI, is concerned, Mr. Mihir Joshi has submitted that the above objection has no basis and is contrary to the facts since the transferor company was 50% joint venture partner in Asset Management Company and, therefore, the scheme would not result in change of controlling interest in Asset Management Company. According to Mr. Mihir Joshi, the Aditya Birla Group holds controlling in both the transferor company as well as the transferee-company. In view of the above, the objections of Mr. Raste have no substance and are hereby rejected.

21. On perusal of the provisions and guidelines referred to in Clause 15(b) of the scheme, it is provided that there is provision of lock-in-period of the equity shares. So far as clauses 13.3.1(a) and 13.3.2 of the SEBI guidelines are concerned, Mr. Mihir Joshi, learned Senior Advocate, has submitted that even during the period of lock-in also, the promoters can transfer the shares internally and there is no restriction in this regard. He has further submitted that, so far as the

case on hand is concerned, there will not be any transfer since the shares will be exchanged. Even as per clause 16 of the scheme, the shares of the transfer-company will be deemed to have been cancelled.

22. On perusal of the guidelines of the SEBI and the relevant clauses, it is evident that, in the present case, there is no violation of any rules or regulations of the SEBI and, therefore, the contentions of the objectors do not find any favour with the Court about doing away with the lock-in period of three years.

23. So far as the objection of sale of shares of companies by the petitioner-company is concerned, Mr. Mihir Joshi has submitted that the sale took place in the year 2004 as reflected in the relevant Annual Report, and no objection was raised at the relevant point of time and the said objection is required to be rejected. The above submission of Mr. Mihir Joshi is worth accepting in view of the fact that no complaint was made before any competent authority and even the objector has also failed to remain present in the meeting convened at the relevant point of time. This objection is also rejected.

24. The objection about the companies having

diverse business and, therefore, the scheme of amalgamation is not advantageous to the shareholders, as canvassed by Mr. Gautam Joshi, does not detain this Court any longer since there is no statutory provision which prohibits amalgamation of companies even if they are having diverse business. However, in the present case, as reflected from the explanatory statement, at page 50, clause 9 clearly indicates that the overall objective of the Group is to consolidate the financial services business within the Company and create an integrated financial services entity. Further, the issue as regards Mr. Bansi Mehta, a valuer, is associated with the Birla Group and, therefore, the valuation is biased, is already decided by the Apex Court in Hindustan Lever Employees' Union (supra) where one Mr. Y.H. Malegam, a Director of TOMCO, was also one of the valuers in determination of share exchange ratio and the same was approved by majority, and the Apex Court has negatived the contention about the scheme being unreasonable. Thus, in my view, there is no merit in the submissions of Mr. Gautam Joshi, learned advocate for the applicant in Company Application Nos. 21 of 2006 and 229 of 2006.

25.One Mr. K.K. Rai has not appeared despite notice in this regard having been served on him.

26.So far as the contention raised by the applicant of Company Application No.75 of 2006 is concerned, the said applicant is neither shareholder nor creditor of the petitioner-company and, therefore, no detailed discussion is necessary in this regard. The submission of Mr. B.B. Naik, learned counsel appearing for the applicant of Company Application No.75 of 2006, that the language of Section 391(2), more particularly the words 'and the like', covers all the material facts including pendency of the criminal cases, has no merit in view of the fact that it is not object of the said Section that any such inquiry pending against a Company, which is not the petitioner-company, requires to be disclosed. On the contrary, the words 'and the like' have to be read with 'material facts' and not with the word 'investigation'. So far as the language of Section 391(1)(d) is concerned, the legal proceeding continues and, therefore, it cannot be said that the scheme of amalgamation at Annexure “I” is framed with a view to stifle the criminal proceeding. The

decision relied upon by Mr. B.B. Naik, learned counsel, in the matter of Bharati Central Bank Limited, 1948 Indian Law Reports 127, which interpreted Section 153 of the Indian Companies Act, 1930, is not helpful to sustain the objection raised by the applicant of Company Application No.75 of 2006. In the said judgment also, the Court observed that, while sanctioning the scheme, the Court has to see whether the provisions of the Act have been complied with and the scheme is reasonable and practical one and the creditors and shareholders had sufficient information with regard to affairs of the Company and, approving the scheme, they have acted in good faith.

27. The judgments reported in 18 Company Cases 144 [Calcutta Industrial Bank Limited] and AIR 1967 Bombay 456 [J.S. Davar vs. Shankar Vishnu], relied upon by Mr. B.B. Naik, do not have any bearing to the facts and circumstances of the present case, more particularly when the parameters enumerated by the Apex Court in 87 Company Cases 792 (Miheer H. Mafatlal) are complied with by the petitioner-company, no room of doubt is left to hold that the petitioner-company has not complied with any of the provisions of the

Companies Act, more particularly as required under Section 391 of the Act.

28. As a result of foregoing discussion, I do not find any merit in the objections raised by the applicants of Company Application Nos. 21 of 2006, 75 of 2006 and 229 of 2006 (and Company Application Nos. 21 of 2006, 75 of 2006 and 229 of 2006) are rejected with no order as to costs.

29. It is pertinent to note that, by the order dated 27th March 2006 passed by the Lucknow Bench of the High Court of Judicature at Allahabad in Company Petition No.21 of 2005, the scheme of amalgamation between Indo Gulf Fertilizers Limited and Aditya Birla Nuvo Limited came to be sanctioned. Similarly, by the order dated 27th January 2006 passed by the learned Single Judge of the High Court of Judicature at Bombay in Company Petition No.830 of 2005, the scheme of amalgamation of Birla Global Finance Limited with Aditya Birla Nuvo Limited came to be sanctioned. This Court also by the order dated 10th January 2006 rendered in Company Petition No.175 of 2005, sanctioned the scheme of amalgamation between Indo Gulf Fertilizers Limited and Aditya Birla Nuvo Limited. In all the above three matters, Aditya Birla Nuvo

Limited was the transferor company, whereas, in the present case, it is transferee-company/amalgamated company.

30.Having thoroughly examined the scheme of amalgamation at Annexure “I”, I hold that the petitioner-company has fulfilled the requirement of provisions of Sections 391 to 394 of the Companies Act and the broad contours, as framed by the Apex Court in 87 Company Cases 792 (Miheer H. Mafatlal) and relied upon by the Lucknow Bench of High Court of Judicature at Allahabad in Company Petition No.21 of 2005, the scheme of amalgamation at Annexure “I” appears to be fair and just. The scheme protects interest of the shareholders and the creditors of the petitioner-company and it is also in the larger interest of the public at large.

31.Accordingly, the arrangement embodied in the Scheme of Amalgamation at Annexure “I” is hereby approved and Company Petition No.176 of 2005 is allowed with the reliefs as prayed for in paragraph 24(a) to (i).

32.The fees of the learned Assistant Solicitor General of India is quantified at Rs.3500/- to be paid by the petitioner-company.

[Anant S. Dave, J]

(swamy)